



# THE **REAL DEAL**

Fiqh of Business Transactions 101

Taught by

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## Non-Islamic Economic Systems

<b>Feudalism</b>	Bound lords and their subjects in Europe during much of the Middle Ages. In theory, the king owned all or most of the land and gave it to his leading nobles in return for loyalty and <u>military service</u> . The nobles in turn held land that peasants were allowed to farm in return for the labor and a portion of the produce.
<b>Socialism</b>	Advocates vesting <u>ownership</u> and control of the means of production and distribution, of capital, land, etc., in the community as a whole.
<b>Capitalism</b>	Based on a free market, open competition, profit motive and private ownership of the means of production. Encourages private investment and business, compared to a government-controlled economy. Investors in these private companies also own the firms and are known as capitalists.

By understanding such terminologies we may gain a better appreciation of the Islamic economic system.

Note: Islam promotes the concept of free market based economy within the boundaries of sharia.

## What does Islam protect?

<b>The Five Necessities</b>	<ul style="list-style-type: none"> <li>▪ Deen (Religion)</li> <li>▪ Nafs (Human life)</li> <li>▪ ‘Aql (Power of Intellect)</li> <li>▪ ‘Irdh (Honor/Reputation)</li> <li>▪ Maal (Wealth)</li> </ul>
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## Sources of the Fiqh of Islamic transactions other than the Qur'an and Sunnah

<b>Sources</b>	<ul style="list-style-type: none"> <li>▪ Ijma (Consensus)</li> <li>▪ Qiyyas (Analogy)</li> <li>▪ Masaalih (Benefits)</li> <li>▪ Sad Adharai' (Blocking the means)</li> <li>▪ ‘Urf (Customary practises)</li> </ul>
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## Introduction to the Contract of Sale

<b>Linguistic definition</b>	The Arabic word for sale is [البيع]. It comes from the root word [عَلَى] which means "outstretched hand". In a business transaction or sale, the buyer and seller both put their hands forward for a hand shake in agreement.
<b>Legal Definition</b>	<p style="text-align: center;"><b>مُبادلة مالٌ بمالٍ على سبيل التراضي</b></p> <p>A contract for the exchange of a property with another property based upon mutual consent.</p>

### Explanation of the legal definition

<b>A contract for the exchange of</b>	<ul style="list-style-type: none"> <li>▪ This shows that there is an exchange between two parties. Both these parties must satisfy stringent conditions.</li> <li>▪ An exchange can be of different types based upon different conditions. On the basis of this, different types of contracts are recognised in Islam.</li> <li>▪ This also shows that a business transaction is an actual "exchange" between both sides. Any transaction in which an exchange has not taken place is therefore not a valid business transaction.</li> <li>▪ In general, contracts are divided into two types: Commutative and non-commutative (benevolent) contracts.</li> </ul>
<b>Properties</b>	<p>Properties can be of different types. The manner of deriving benefits from them differs according to the type of contract.</p>

<b>Based upon mutual consent</b>	This is an important condition. Mutual consent must be present for a contract to be valid. However, consent is subordinate to the contract itself being valid. There is no value placed in mutual consent if the Shariah does not consent to the contract in the first place.
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## Proofs for the permissibility of Trade

<b>Quran</b>	<p>﴿ وَأَحَلَ اللَّهُ الْبَيْعَ وَحَرَمَ الرِّبَا﴾</p> <p>And Allah has permitted trade but forbidden riba. [AlBaqarah: 275]</p> <p>﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَطْلِ إِلَّا أَن تَكُونَ تَحْرَةً عَنْ تَرَاضٍ مِّنْكُمْ ﴾</p> <p>O you who believe! Do not eat your property amongst yourselves in falsehood except by way of lawful business based on mutual consent. [AnNisaa: 29]</p> <p>﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاصْسَعُوا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ ذَلِكُمْ خَيْرٌ لَّكُمْ إِن كُنْتُمْ تَعْلَمُونَ ﴿١﴾ فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ وَادْكُرُوا اللَّهَ كَثِيرًا لَّعَلَّكُمْ تُفْلِحُونَ ﴿٢﴾</p> <p>O you who believe! If the call for prayer on the day of Jum'ah is given, then hurry to the remembrance of Allah and leave trade [AlJum'ah: 1-2]</p> <p>﴿ لَيْسَ عَلَيْكُمْ جُنَاحٌ أَن تَتَبَغُوا فَضْلًا مِّنْ رَبِّكُمْ ﴾</p> <p>There is no sin upon you if you were to seek the bounty of your Lord. [AlBaqarah: 198]</p>
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<b>Sunnah</b>	<p>البِيْعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا.</p> <p>The buyer and seller have the choice to conclude or repeal their transaction as long as they have not separated. [Agreed upon]</p>
	<p>اشْتَرَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مِنْ الْيَتَمَيْمَيْنِ الْحَائِطَ.</p> <p>The Prophet sallallahu alaihi wa sallam bought the courtyard from the two orphans. [Agreed upon]</p>

## The study of Business regulations in the Shariah

Narrated Rifa'a bin Rafi': The Prophet (peace be upon him) was asked: "What type of earning is best?" He replied, "A man's work with his hand and every business action which is approved." [Reported by Al-Bazzar; Al-Hakim graded it *Sahih*].

عن رِفَاعَةَ بْنِ رَافِعٍ رَضِيَ اللَّهُ تَعَالَى عَنْهُ،  
أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ سُئِلَ أَيَّ  
الْكَسْبِ أَطْيَبُ؟ قَالَ: ((عَمَلُ الرَّجُلِ  
بِيَدِهِ، وَ كُلُّ بَيْعٍ مَبُورٍ)). رواه البزار،  
وَصَحَّحَهُ الْحاكِمُ.

A prelude to the study of the regulations regarding business entails the study of the following ten matters:

1. Pillars of a business transaction.
2. The goals and purposes of Shariah in business transactions.
3. Properties and their types.
4. Trading competence.
5. Conditions *of* business transactions.
6. Conditions *in* business transactions.
7. Choice in contracts.
8. Contracts and their types.
9. Defects in contracts
10. Profit and its limits in Sharia

## I. Pillars of Business

<b>3 main pillars</b>	<ol style="list-style-type: none"> <li>1. The buyer and the seller</li> <li>2. The commodity or subject of the contract</li> <li>3. The Seegha (i.e. Formula): Offer and Acceptance.</li> </ol>
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All of the following forms of exchange are permissible in Islam:

- The buyer and seller are physically present and agree verbally to the contract.
- Silent transaction [بِيعُ الْمَعَاطَةِ]: where the money and the product change hands without verbal agreement. Such a contract is permissible according to the majority of the scholars of Islam.
- Modern methods of transaction: via the internet, phone, SMS, fax, telex, etc... are permissible based on the decision of the Islamic Fiqh Council.

Ibn Taymiyyah rahimahullah says: “It is not obligatory upon people to stick to only certain terminologies for the purpose of contracts. It is not impermissible for them to make a contract with terminologies that others use as long as the terminologies that are used pertain to their intended meaning – even if certain phrases are preferred over others.” [AlQawaid an-Nooraniyyah Al-Fiqhiyyah (2/291)]

## II. Goals and purposes of Shariah in Business

<b>3 main goals</b>	<p><b>1. All business activities are permissible except that which was forbidden by Shariah.</b></p> <p>This is from the most important goals. The Shariah permits most contracts and only prohibits those few that fulfil certain conditions. Therefore every new contract is permissible except the one that contains features or conditions that make it impermissible.</p> <p><b>2. Prevention of oppression.</b></p> <p>Allah has not decreed any oppression in His legislation, nor does He want us to oppress each other, whether it is by mutual consent or coercion.</p> <p><b>Example:</b> The prohibition of selling that which is uncertain in its quality or quantity. Forcing someone to sell or rent his property with unfair pricing.</p> <p><b>Note: What is the position of adhesion contracts in Islamic Shariah?</b></p> <p><b>3. Prevention of conflicts and disputes.</b></p> <p>Allah wishes to remove any matter that may cause us to have dispute.</p> <p><b>Example:</b> The prohibition of selling upon the sale of your brother.</p>
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## How does the Shariah legislate in business?

It does so by either one of two ways:

1. By prohibiting the transaction.
2. By allowing the transaction with certain conditions or within certain limits.

<b>Remember</b>	Many a times, a contract may have some sort of oppression in it, or may generally lead to conflicts and disputes, however it is still allowed due to the greater benefit that the Shariah perceives in allowing it.
	Such as whole/bulk sales or auction sales

## Wealth and its types

<b>Legal definition of wealth</b> [عِلْم]	Anything that has a material value, it can be owned and used in a legal way.
<b>Note</b>	Anything that is not permissible to benefit from, such as alcohol or dead meat or pork or interest money, then they are not considered a valid commodity in Islam.

There can be three types of rights upon any valid wealth:

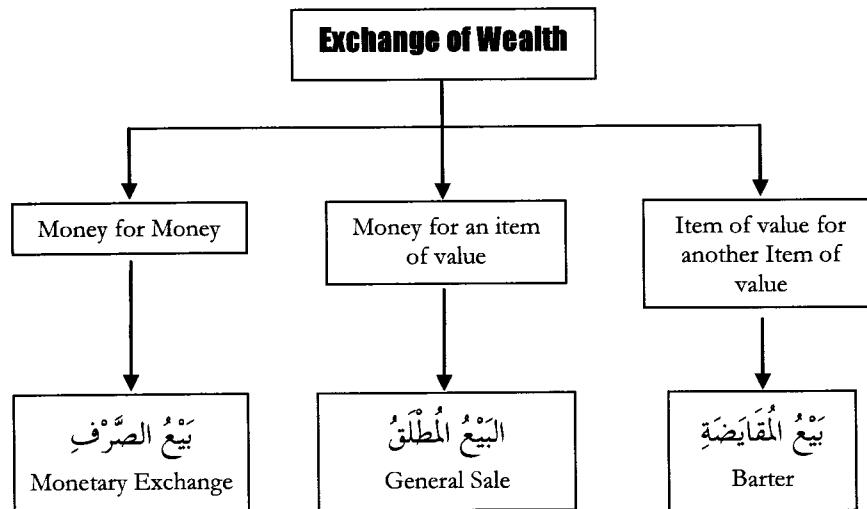
1. **The right of the owner:** Thus it is not permissible to take his wealth away except by his or her will. It is also for this reason that the punishment for stealing is so severe.
2. **The right of Allah:** In effect, all wealth is from the property of Allah. When Allah has allowed us to use his property, then it can only be within the guidelines specified in the Shariah.
3. **The right of the community:** This entails putting the greater benefit of the community above the benefit of individuals.

We can look at the types of wealth by way of:

- A. Its nature.
- B. Possibility of ownership of the property.
- C. Its specificity.

### **A. By way of its nature**

<b>Wealth can be either</b>	<ul style="list-style-type: none"> <li>▪ Price or money [ثمنٌ]. This is of three types:           <ul style="list-style-type: none"> <li>○ Gold.</li> <li>○ Silver.</li> <li>○ Currency or paper money</li> </ul> </li> <li>▪ The item that is priced or valued [مُثمنٌ]. This is of two types:           <ul style="list-style-type: none"> <li>○ Non-transferable commodity (Properties and estates) [عقارٌ]</li> <li>○ Transferable commodity (Other than properties) [منقولٌ]</li> </ul> </li> </ul>
<b>Benefits of knowing this division</b>	<p>There are numerous benefits from knowing this division:</p> <ul style="list-style-type: none"> <li>• The transferable commodities should be sold off before the non-transferable ones at the time of bankruptcy.</li> <li>• The rights of neighbours are to be catered for in non-transferable commodities rather than transferable ones.</li> <li>• Pre-emption [الشفعه] is to be respected as far as non-transferable commodities are concerned. There is no such thing for transferable commodities, except if they are jointly owned.</li> </ul>



**Figure 1:**

Exchange of properties (by way of nature of commodity)

## B. By way of possibility of ownership of the property

<b>That which cannot be owned</b>	Such as those properties that have general benefit for all, such as roads, alley paths between properties, public wells, bridges etc... as long as the benefit is for all.
<b>That which shouldn't be owned except by an express reason from the Shariah</b>	Such as properties that are endowments for the poor.
<b>That which can be owned</b>	These are all commodities that do not fit into the above two types.

### C. By way of its specificity or distinction.

A commodity that is bought or sold may be either:

- Specific [مُعَيْنٌ]
- Non-Specific and remains in one's liability [في الذمَّةِ]

<b>Specific commodity</b>	The deal was contracted on a specific commodity.
<b>Example</b>	I will sell you this copy of Sahih AlBukhari that I have in my hand.

<b>Non-specific commodity</b>	The deal was contracted on a commodity that is non-specific that remains in a person's debt or liability.
<b>Example</b>	I will sell you a copy of Sahih AlBukhari printed by ..... in the year ..... available in colour .....

#### What is the benefit of knowing whether the deal has been contracted upon a specific or a non-specific commodity?

The benefit of knowing this, is working out what the solution should be if a defect is found in the product. So, if the defect is found in a product where the deal was contracted on:

- A specific commodity: Then the seller must return the price that was paid and take back his product from the buyer if the latter wished to repeal the transaction.
- A non-specific commodity: Then the seller has the option of either returning the price or giving him another product similar to it in description (that is free of the defect). The buyer cannot force the seller to give his money back. Rather, if the seller wishes to give him another copy of the book, then he is obliged to take it.

## Exchange of commodities by way of specificity

A commodity that is specific or non-specific may be bought and sold either one of two ways:

- Transfer of the commodity is finalized immediately [تَاجِزٌ].
- Transfer of the commodity is finalized at a future time. Until then, it remains on credit [نَسْيَةٌ].

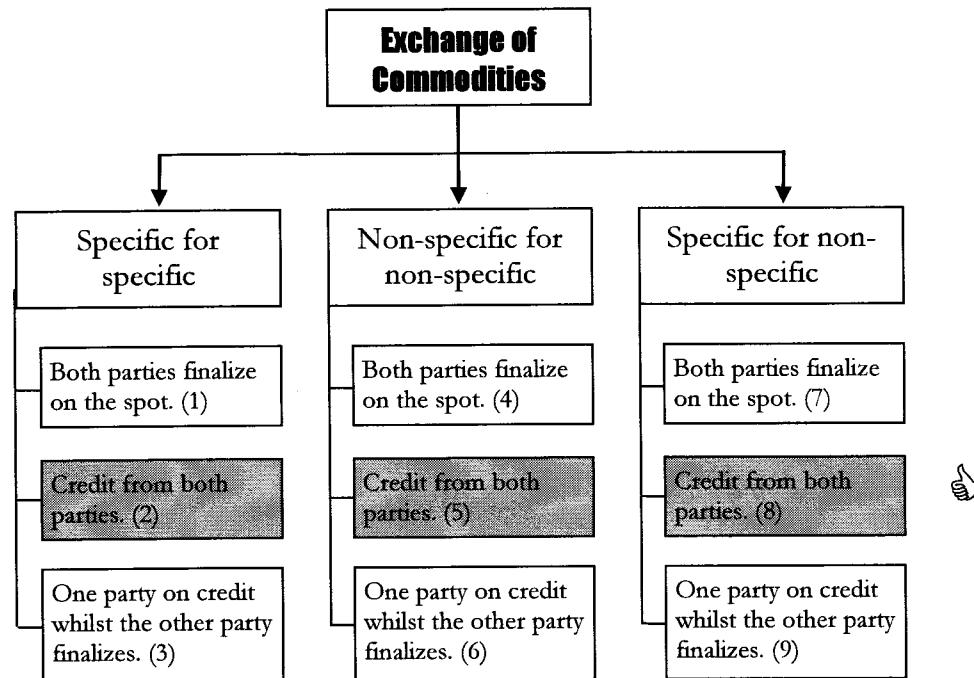


Figure 2: Exchange of commodities (by way of specificity)

<b>Example for (1)</b>	I will give you this Sahih AlBukhari now for this 100 CND note now.
<b>Example for (2)*</b>	I will give you this Sahih AlBukhari tomorrow for this 100 CND note which I will take tomorrow.
<b>Example for (3)</b>	I will give you this Sahih AlBukhari tomorrow for this \$100 note now (or vice versa).
<b>Example for (4)</b>	I will give you a copy of Sahih AlBukhari now for \$100 now.
<b>Example for (5)*</b>	I will give you a copy of Sahih AlBukhari tomorrow for \$100 which I will take tomorrow.
<b>Example for (6)</b>	I will give you a copy of Sahih AlBukhari tomorrow for \$100 now (or vice versa).

<b>Example for (7)</b>	I will give you this Sahih AlBukhari now for \$100 now (or vice versa).
<b>Example for (8)*</b>	I will give you this Sahih AlBukhari tomorrow for \$100 tomorrow (or vice versa).
<b>Example for (9)</b>	I will give you this Sahih AlBukhari now for \$100 to be given tomorrow (or vice versa).

### III. Trading competence

<b>Trading competence</b>	1. Puberty 2. Maturity
<b>Proof</b>	<p>﴿ وَابْتَلُو اَلْيَتَمَ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ ءَاسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ اُمُوْهُمْ ﴾</p> <p>And test the orphans when they have attained the age of puberty, if you find them mature, then give them their wealth. [AnNisaa: 6]</p>
<b>Note</b>	Modern laws also prescribe to the concept of maturity for carrying out individual business transactions. The only difference between this and the Shariah, is that the Shariah has not put a definite age limit, whereas modern laws put the age limit at 18 or 21 years old.

### Important

The scholars of Islam have discussed the legal capacity of the following types of people to agree to a business contract due to the presence of specific texts of the Quran and Sunnah pertaining to them:

1. A child who has reached the age of differentiation [الصَّبِيُ الْمُمِيزُ].
2. Women.
3. Those faced with incidental causes for the removal of legal capacity [عَوَارِضُ الْأَهْلِيَّةِ].

**Child who has reached the age of differentiation**

The transaction that such a child may deal in, can be either one of three types depending on whether the child benefits from it or not:

1. There is complete benefit in it for him: Example: Acceptance of a gift. In such a case, it is permissible for the child to partake in the transaction even without the permission of his guardian.
2. There is complete harm in it for him: Example: Giving a gift or giving a loan. In such a case, it is not permissible for him to partake in this transaction, even if his guardian permits him.
3. There is incomplete harm or benefit in it for him. Example: Buying and selling. In such cases, the permissibility of the transaction is based on the permission of his guardian.

☞ This is also the same ruling for the one who has deficient mental capacity, the immature and the bankrupt.

**Women**

Men and women are similar in their rights due *towards* them and *from* them, in matters of business and contracts, except in two matters:

- A woman does not have the right to conduct a marriage contract by herself according to the majority opinion, as against Abu Haneefah may Allah have mercy on them all. The Shariah has given men this responsibility.
- The capacity of a woman to donate from her own money more than a third without the permission of her husband. The majority of scholars permitted her, whereas Imam Malik may Allah mercy upon them all, forbade it.

☞ All scholars agree by complete consensus that the sister has the right to make her own choice and it is not permissible for her guardian to force her to marry against her will.

**Incidental removal of legal capacity**

This can happen due to one of two reasons:

1. Pre-decreed: Example: Madness, Deficient mental capacity, Coma, Sleep.
2. Self-made: Example: Bankruptcy, Drunkenness & Immaturity.

<b>Pre-decreed</b>	
<b>Madness</b>	A person does not possess the legal capacity to agree to any transaction in the duration of his madness. However, this does not remove the obligation of Zakat on him. All matters are referred to his guardian in the case of complete madness.
<b>Deficient mental capacity</b>	In this case, the person has the ruling of the child who has reached the age of differentiation.
<b>Coma, Sleep</b>	<p>This removes the legal capacity to authorize transactions due to the absence of sense in these states. It does not however remove the obligation of Zakat on him.</p> <p><b>Note:</b> Sleep does not remove the liability for any claim against damage, loss of property or loss of human life caused by the sleeping person.</p>

<b>Attained</b>	
<b>Bankruptcy</b>	<p>The scholars have differed as to what is to be done with such a person. The majority agree that he should be prevented from having control over the portion of his wealth that is encompassed by his debt. When the judge has judged him to be bankrupt, then we apply to him the same rulings as the child who has reached the age of differentiation. Thus, that which could bring benefit or harm for him, such as business transactions – then it would depend on the permission of his creditors.</p>
<b>Drunkenness</b>	<p>All the scholars agree that if the person became drunk due to an excusable reason, then his legal capacity to agree to contracts is removed, and therefore his contracts are not valid.</p> <p>On the other hand, if the person became drunk due to a forbidden reason, then:</p> <ul style="list-style-type: none"> <li>• The majority of scholars believe that his legal capacity is still present (in order to punish him for what he will earn from his own doing).</li> <li>• The Maliki madhab as well as the opinion of Sheikhul-Islam Ibn Taymiyyah is that such a person is free of legal capacity. This opinion is stronger.</li> </ul>
<b>Immaturity</b>	<p>This takes the same ruling applied to the legal capacity of the child who has reached the age of differentiation.</p>

## IV. Conditions of Business transactions

<b>Condition No. 1</b>	<p>Mutual consent.</p> <ul style="list-style-type: none"> <li>• Forced selling or buying is not correct.</li> </ul>
<b>Condition No. 2</b>	<p>The buyer and seller must be competent to buy and sell.</p> <ul style="list-style-type: none"> <li>• The transaction of the insane or child is not correct.</li> <li>• The validity of selling off other people's wealth or buying with other people's wealth is subject to the consent of the owner of the wealth.</li> </ul>
<b>Condition No. 3</b>	<p>The commodity must be permissible to use in other than times of need.</p> <ul style="list-style-type: none"> <li>• Impermissible commodities: Najis (Ritually impure) products such as alcohol, blood, dead animals, manure of impure animals, stolen products etc..</li> </ul>
<b>Condition No. 4</b>	<p>The commodity must be sold by the owner or he who is in the position of the owner.</p> <ul style="list-style-type: none"> <li>• Either the owner or the agent, or the father of the owner.</li> </ul>
<b>Condition No. 5</b>	<p>The owner must be able to handover the commodity to the buyer.</p> <ul style="list-style-type: none"> <li>• It is not permissible to sell for example: A runaway animal, or products that one does not possess, or products that have been stolen from oneself.</li> </ul>
<b>Condition No. 6</b>	<p>The commodity must be well determined by sight or by description.</p>

 These conditions are extremely important to understand. We will be drawing on these conditions at all stages to understand the validity or invalidity of business transactions.

## V. Conditions in Business transactions

The essential matter regarding contracts in general, is that they are permissible, according to the majority of scholars.

<b>Quran</b>	<p>﴿يَأَيُّهَا الَّذِينَ إِيمَنُوا أَوْفُوا بِالْعُهُودِ﴾</p> <p>O you who believe! Honour your contracts. [AlMa'idah: 1]</p>
	<p>﴿يَأَيُّهَا الَّذِينَ إِيمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَطْلِ إِلَّا أَنْ تَكُونَ تِجْرِيًّا عَنْ تَرَاضٍ مِّنْكُمْ﴾</p> <p>O you who believe! Do not eat your property amongst yourselves in falsehood except by way of business based on mutual consent. [AnNisaa: 29]</p>

As far as conditions in contracts are concerned, then the vast majority of the scholars of Islam only allow those conditions that are directly from the Quran and Sunnah or derived from them by way of Ijtihaad. On the other hand, the Hanbali scholars and some Maliki scholars, may Allah have mercy on them all, are of the opinion that all conditions in contracts are permissible, as long as they do not go against the Shariah. The latter opinion is the most correct opinion inshaAllah, due to the following proofs:

<b>Quran</b>	<p>﴿يَأَيُّهَا الَّذِينَ إِيمَنُوا أَوْفُوا بِالْعُهُودِ﴾</p> <p>O you who believe! Honour your contracts. [AlMa'idah: 1]</p>
<b>Sunnah</b>	<p>الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا أَحَلَ حَرَامًا أَوْ حَرَمَ حَلَالًا.</p> <p>The Muslims are upon their conditions, except a condition that makes a prohibited permissible or a permissible prohibited. [Reported by Abu Dawud]</p>
<b>Statement of Umar radjalahu anahu</b>	<p>مُقَاطِعُ الْحُقُوقِ عِنْدَ الشُّرُوطِ.</p> <p>The perimeter of rights is upon the conditions that are set.</p>

## Permissible conditions

<b>Firstly</b>	Conditions that are part and parcel of the transaction.
<b>Example</b>	If you buy this product, you are allowed to do with it whatever you wish.

<b>Secondly</b>	Conditions that are meant to enhance and empower the transaction.
<b>Example</b>	I will sell you this car for 10,000 in instalments as long as you provide a guarantor who will pay me in case you default.

<b>Thirdly</b>	Conditions that stipulate a <b>set</b> amount of benefits for either the buyer or seller.
<b>Example</b>	I will sell you this house with the condition that I live in it for the next 1 month.

<b>Fourthly</b>	Stipulating a condition for the time of the transaction to take place. [Controversial]
<b>Example</b>	I will sell you only when the market price is so and so.

<b>Fifthly</b>	Stipulating some restrictions upon the free disposal of the other contracting party within a specific transaction.
<b>Example</b>	<p>Such as: you can rent this property, but you can't do business from it, or Ford motor company selling their employees Ford cars at discounted rates with the condition that they cannot sell it off within the first 6-12 months.</p> <p>Note: Valid condition in the opinion of Imam Ahmed and Ibn Taymiyah.</p>

## Impermissible conditions

<b>Firstly</b>	Stipulating a second contract based upon the first one. [controversial matter]
<b>Example</b>	I will sell my car to you with a condition that you rent my house for one year.

<b>Secondly</b>	Stipulating conditions that go against the purpose of the transaction.
<b>Example</b>	I will sell this car to you with a condition that you do not sell it to anyone.

<b>Important Note</b>	Stipulating conditional penalties in a contract that enact upon non-performance of a requirement of the contract, is valid in Islam. This is based on the fact that such conditions are from the benefit of the contract and prevent the parties from fooling around with their obligations.
<b>Example</b>	In a web design contract, the customer can stipulate that if the website is not finished in a set amount of time, then the customer is only obliged to pay 80% of the amount.

Such penal conditions are generally from the customer to the seller. If the seller is accepting money for his products or services, then it may not be allowed for him to stipulate such penal conditions upon the buyer, as it may be riba. Example: It would not be permissible for the seller to say that if the customer does not pay within the set date, then he must pay 10% more.

## VI. Choice or Options in contracts

The Shariah permits a number of "Options" or choices, to the buyer and sometimes the seller, after a contract has been made.

These options do not enter into those contracts, which if they were to be applied, could cause more harm than good. Therefore, these options are not valid in contracts such as giving the customer the power to repeal the contract at any time he wishes to do so.

The options and choices that the Shariah allows in contracts include amongst others:

<b>Option of Cancellation within the Trading Session</b> [خيار المجلس]	The choice of continuing or invalidating the contract whilst the buyer and seller are still in the place of the contract. This is with the Shafi and Hanbali madhabs, whilst the classical Hanafi and Maliki madhabs are not in favour of it.	 This type of choice is not recognized by modern commercial law which stipulates that a contract becomes binding upon agreement and signing of the contract.
<b>Proof</b>	<p style="text-align: center;">البيعان بالخيار ما لم يتفرقَا</p> <p>The buyer and seller have the choice to conclude or repeal the transaction as long as they have not separated. [Agreed upon]</p>	
<b>Example</b>	If a person went to a grocery store and purchased an item, then he still has the option to return the item and get his money back as long as he has not left the store. If he leaves the store, then the contract becomes binding upon him unless agreed otherwise.	

<b>Option of Cancellation within a defined period of time.</b> [خيار الشرط]	Making the choice that the buyer or the seller has the choice to invalidate the contract within a set amount of time.
<b>Proof</b>	<p style="text-align: center;">إذا بايَعْتَ فَقُلْ لَا خِلَابَةً</p> <p>The hadeeth of Habban bin Munqidh radillahu anhu who used to be constantly fooled in business</p>

 Cajole (def.): to influence, wheedle, coax or urge by gentle urging, caressing, or flattering

	dealings – so the Prophet sallallahu alaihi wa sallam told him: If you purchase, then say no Cajole and I reserve for myself the option for three days. [Classified as Hassan by al-Albaani]
<b>example</b>	30 day money back guarantee.

<b>Option of Cancellation upon seeing the item of sale</b> [خيار الرؤية]	<p>That a person, who has agreed to purchase a product without seeing it, has the right to annul the contract upon seeing the product.</p> <p>This option is valid as long as two conditions are met:</p> <ol style="list-style-type: none"> <li>1. That the product is specific.</li> <li>2. That he agreed to purchase it without physically seeing it.</li> </ol>
<b>Note</b>	This option is a matter of difference amongst the scholars based upon their differences on selling a specific product that is absent from the place of sale.

<b>Option of Cancellation upon finding a defect</b> [خيار العيوب]	<p>The right to invalidate the contract upon finding a fault in the product that was not made explicit prior to the sale.</p> <p>This option is valid as long as three conditions are met:</p> <ol style="list-style-type: none"> <li>1. That the defect decreases the value of the product.</li> <li>2. That the defect was present prior to the sale.</li> <li>3. The buyer was not aware of it before concluding the transaction.</li> </ol>
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## VII. Types and Classifications of Contracts.

Contracts can be divided into different types by way of different considerations:

1. By way of the ruling of the Shariah.
2. By the way of the type of commodity being sold.
3. By the way of the ruling of the contract itself after it has been agreed upon.
4. By way of whether 'possession' (taking hold of the commodity) is obligatory or not.
5. By way of return or compensation from the deal.
6. By way of validity or invalidity of the contract.

### **Ruling of the Shariah** [من حيث الحكم الشكلي]

1. Obligatory: Such as buying water to drink if one fears dying out of thirst.
2. Recommended: Such as lending and charity.
3. Permissible: Such as buying and selling and renting.
4. Disliked: Such as selling grapes to the one who you suspect will make wine out of it.
5. Forbidden: such as
  - a. Lending with riba.
  - b. Selling dead meat or pork or alcohol or statues or musical instruments.
  - c. Selling on the sale of your brother.
  - d. Two contracts in one contract. (In some cases only)
  - e. Selling a debt for a debt. (In some cases only)

### **Type of commodity being sold** [من حيث المآلية وعديمها]

1. Money from both parties.
2. Money from one party and a transferable commodity from the other.
3. Money from one party and a non-transferable commodity from the other.
4. Money from one party and a benefit or work from the other.

### **Binding and nonbinding contracts:**

[من حيث النزوم وعدمه]

1. Binding on both parties: such as buying and selling, renting etc..
2. Not binding on both parties: such as when both parties have the right to discontinue with the contract.
3. Not binding on one party, but binding on the other: contract of guarantee.

### **Is possession (taking hold) of the commodity required for the contract to be Binding**

[من حيث اشتراط القبض وعدمه]

1. Contracts in which possession is not obligatory: Example: Marriage (dowry), Guarantee, Agency etc..
2. Contracts in which possession is obligatory:
  - a. For the transfer of ownership: Such as gifts and lending.
  - b. For the contract to be correct: Such as monetary transactions.
  - c. For the contract to be obligatory: Such as giving gifts and security deposit [الرهن].

### **Commutative and non-commutative contracts**

[من حيث وجود العوض وعدمه]

1. There is compensation: such as buying and selling.
2. There is no compensation: such as in giving gifts and charity and “guarantee”.

### **Validity or invalidity of the contract**

1. Valid contracts: such as buying and selling and renting provided that all conditions are met.
2. Invalid contracts: Such as buying or selling to and from a mad person or a child or buying and selling blood, pork, alcohol, human body parts, dogs, items of ritual impurity, manure of prohibited animals.

## VIII. Defects in contracts

After the contract has been agreed, there may be a number of defects that emerge in it.

These can be:

1. Coercion
2. Mistake in the contract
3. Extreme deceit
4. Unforeseen circumstances

<b>Coercion</b> [اُكْرَهٌ]	<p>If coercion exists in a contract, then the contract is not valid. Coercion is considered by the Shariah as long as the following 5 conditions are fulfilled:</p> <ol style="list-style-type: none"> <li>1. The coercer has the ability to carry out the harm upon the coerced. So coercion is not correct from a weak person to a strong man for example. (The claim of the latter will not be accepted).</li> <li>2. That the coerced is convinced that the coercer will carry out his threat.</li> <li>3. That the threat is something that the coerced cannot bear, such as loss of life or loss of a faculty or limb or loss of its function or that of someone else's.</li> <li>4. That the threat is illegal. So if it was legal, such as threatening the one who has defaulted on his debt payment with sale of his property in order to repay his creditors, then this is not termed as coercion.</li> <li>5. That the threat is for a near or immediate punishment rather than a future one.</li> </ol>
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<b>Mistake</b> [الغلط]	<p>This can be of two types:</p> <ol style="list-style-type: none"> <li>1. A mistake that invalidates the contract – such as the person agreed to buy gold, whereas the seller thought he meant silver.</li> <li>2. A mistake that does not change the benefits in any substantial way – in such a case, the contract is still valid. However, both parties have the choice to invalidate the contract if they wish.</li> </ol>
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<b>Extreme deceit</b> [الغبنُ الفاحشُ]	<p>The criteria for understanding what can be deemed to be extreme deceit, are the customs of the people.</p> <p>According to the most correct opinion, the buyer has the right to invalidate the contract if the intention of the seller was to truly deceive the buyer. Such a matter would need to be settled in front of a judge.</p> <p>Example: He sold him a car with a major defect in the transmission.</p>
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<b>Unforeseen circumstances</b> [الظروفُ الطارئةُ]	<p>Such as for example, a sudden rise in the prices of the raw materials or sudden fall in the value of the currency.</p> <p>The goals and purposes of Shariah permit modification of the contract. Such a matter would be left up to the judge who may:</p> <ul style="list-style-type: none"> <li>• Divide the losses between the parties.</li> <li>• Nullify the contract if it has yet to commence.</li> <li>• Modify the conditions of the contract in order to distribute the benefit and harm between the parties.</li> </ul>
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## Profit and what is permissible from it

<b>Definition</b>	<p>الفرْقُ بَيْنَ الْإِيرَادَاتِ الْكُلِّيَّةِ وَالْتَّكَالِيفِ الْكُلِّيَّةِ فِي زَمَنٍ مُحَدَّدٍ.</p> <p>Net income: the excess of revenues over outlays in a given period of time.</p>
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In general, profiting from a business transaction is from the goals and purposes of Shariah. However, the Shariah sets certain guidelines to prevent profiteering when the harm is greater than the good. From these prohibited profits are:

<b>Profits from trading in forbidden items</b>	<p>Such as trading in alcohol, pork etc..</p>
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<b>Profits from cheating and lying</b> الربح عن طريق [ الغش والتدليس]	<p>That can be by hiding the defects of the product or marketing it in a way that hides its harms or deceives him. The Prophet sallallahu alaihi wa sallam had said:</p> <p>الدِّينُ نَصِيبَةٌ، قُلْنَا: لِمَنْ يَا رَسُولَ اللَّهِ؟ قَالَ: اللَّهُ وَلِكِتَابِهِ وَلِرَسُولِهِ وَلِأَئِمَّةِ الْمُسْلِمِينَ وَعَامَّتِهِمْ.</p> <p>The religion is sincerity. We asked: To whom O Messenger of Allah? He said: To Allah, His Book, His Messenger, The leaders of the believers and the believers themselves.</p>
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<b>Profits from extreme trickery</b> الربح عن طريق [ العبن الفاحش]	<p>In general, every business transaction or marketing has some form of trickery. It is only when this is beyond limits, that the Shariah considers it to be prohibited.</p>
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### Profits from monopoly or hoarding

[الرِّبْحُ عَنْ طَرِيقٍ]  
[الإِحْتِكَارُ]

من احتكر فهو خاطئ

“Whoever hoards is in error”. [Muslim and Tirmidhi]

This can be in basic foods or in other items, as long as such a monopoly adversely harms the general public.

### Is there a higher limit for profits?

There is no higher limits for profits in the Shariah. Rather, the Shariah recognizes the need to make more profit in certain items rather than others due to the nature of the product or manner of sale. Thus:

- Certain products sell slower than others, so the profit margin on them may be higher than others.
- Products that are sold on credit need to be higher in profit than those sold for cash.
- Products that are luxuries of life – can have higher profit margins than those that are absolute essentials of life – such as water and basic foods.

### Is it permissible for the leader to set a price limit?

The Shariah allows the leader to set a price limit provided the prices rise uncontrollably due to market forces or unscrupulous trading. This should be done in the interest of the greater good of the people.

## Forbidden transactions by concensus

There are a number of transactions that are forbidden by the agreement of the Scholars. Amongst them, we will discuss the following 8 types of forbidden transactions:

- Selling a debt for debt. (Some forms only)
- Two contracts or sales in one. (In some cases)
- Selling upon the sale of your brother.
- The resident selling on behalf of the visitor.
- Selling impure and forbidden products.
- Selling during and after the time of the second Adhan of Jum'ah.
- Sales of excessive gharar.
- Riba.

### Why are these transactions prohibited?

In general, the following are the reasons why the transactions noted above are forbidden:

1. The contract is upon a commodity or to a person or in a time that is forbidden.
2. The contract contains riba.
3. The contract contains extreme uncertainty.
4. The contract goes against one or more of the goals and purposes of the Shariah in business.

## Forbidden: Selling a debt for a debt [يَبْعُ الدَّينُ بِالدَّينِ]

<b>Proof</b>	<p>عَنْ أَبْنَ عُمَرَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَا عَنْ      يَبْعُ الْكَالِيَ بِالْكَالِيَ.</p> <p>Ibn Umar radiallahu anhuma said that Rasulullah sallallahu alaihi wa sallam prohibited the sale of a debt for a debt. [Daeef, reported by Daraqutni and AlHakim]</p> <p>Imam Ahmed said: "There is no authentic hadeeth regarding this matter, however the scholars have consensus that it is not permissible to sell a debt for a debt." [Reported by Ibn Hajar in At-Talkhees (3/26)]</p>
<b>Explanation</b>	A product can be either something that is exchanged immediately or in the future. If it is transferred in the future, it remains in debt and is a liability. The scholars of Islam are in complete agreement that the sale of debt with a specific value for another debt of a higher value is not permissible.
<b>Example</b>	Discounting of Bills: Cashing or trading a bill of exchange at less than its par value and before its maturity date.

## Forbidden: Two contracts or two sales in one [بِعْتَانٍ فِي بَيْعَةٍ]

<b>Proof</b>	<p>مَنْ بَاعَ بَيْعَتَيْنِ فِي بَيْعَةٍ فَلَهُ أُوْكَسْهُمَا أَوْ الرِّبَا.</p> <p>Whoever makes two sales in one sale, then for him is the lesser value or it is Riba. [Abu Dawud, AlHakim and others. Authenticated by Ibn Hazm]</p>
<b>Explanation</b>	<p>The meaning of this prohibition can be either of the following scenarios:</p> <ul style="list-style-type: none"> <li>• A product is sold to the buyer with the money to be paid in the future and then repurchased from the buyer with a lesser amount of money paid immediately. This is known as an A'eenah transaction. This will be discussed a bit further.</li> <li>• Selling with two prices, cash and deferred with a higher value without finalizing the deal.</li> </ul>

► This point is extremely important for understanding modern day transactions, especially modern day halal finance schemes.

Also: you must not confuse this scenario with one when a person buys two products with one price.

## Is it allowed to have two prices for one product – such as cash price and another price for credit sales?

Yes it is permissible according to the vast majority of scholars. Thus instalment sales are similarly permissible in Islam. However, the terms of the contract have to be finalized at the time of making the agreement.

<b>Note</b>	<p>Tabulating different charges for different payment periods and various installment amounts is permissible before the contract. After the contract has been made, then increasing in the amount due would be a form of riba.</p>
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## Forbidden: Selling upon the sale of your brother [بَيْعُ الرَّجُلِ عَلَى بَيْعِ أَخِيهِ]

<b>Proof</b>	<p>لا يَبْعِثْكُمْ عَلَى بَيْعٍ بَعْضٍ.</p> <p>Let none of you sell upon the sale of his brother. [Agreed upon]</p>
<b>Explanation</b>	<p>This type of sale is forbidden whether it is another seller who tries to sell above the sale of his brother or another purchaser who offers a higher price for the same product.</p> <p>This type of sale is prohibited provided two conditions are met:</p> <ol style="list-style-type: none"> <li>1. That the contract has not become binding as yet. If the contract has already become binding, then there is no benefit in the prohibition.</li> <li>2. That it is without the express permission of his brother. If he has permission, then it is not forbidden.</li> </ol>

<b>Exception</b>	Auction sales are an exception to this rule by the complete concensus of the scholars of Islam.
<b>Proof</b>	The Prophet sallallahu alaihi wa sallam held an auction to help an Ansari avoid begging. [Reported by Abu Dawud and Tirmidhi]

## Forbidden: The resident selling on behalf of the visitor [يَعِظُ الْحَاضِرُ لِلْبَادِي]

<b>Proof</b>	<p>لَا يَعِظُ حَاضِرٌ لِبَادِي، دَعُوا النَّاسَ يَرْزُقُ اللَّهُ بَعْضَهُمْ مِنْ بَعْضٍ.</p> <p>Let not the resident sell for the visitor. Leave the people so that Allah may provide for them from each other. [Agreed upon]</p>
<b>Explanation</b>	<p>According to the majority of the scholars, the meaning of this prohibition is that the resident becomes a broker or agent for the visitor (seller), so he tells him: You shouldn't sell, I know better! So the visitor (seller) appoints the resident to be his agent. The agent sells and rises the prices. Had the visitor sold for himself, then he would have discounted for the people.</p>

<b>Conditions for this prohibition</b>	<ol style="list-style-type: none"> <li>1. That the visitor wants to sell that which people are generally in need of, not something which is rare or only appeals to certain sections only.</li> <li>2. That the visitor is unaware of the actual price in the land.</li> <li>3. That the visitor wants to sell straight away, not in variable amounts.</li> <li>4. That the price of the product goes up.</li> </ol>
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## [نَهَا النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ ثَمَنِ الْكَلْبِ وَمَهْرِ الْبَغْيِ وَحُلُوَانِ الْكَاهِنِ]

<p><b>Proof</b></p>	<p>نَهَا النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ ثَمَنِ الْكَلْبِ وَمَهْرِ الْبَغْيِ وَحُلُوَانِ الْكَاهِنِ.</p> <p>The Prophet sallallahu alaihi wa sallam forbade from making profits of selling a dog, the income from prostitution and the fortune teller's fees. [Agreed upon]</p>
<p><b>Examples of products that are prohibited to sell</b></p>	<p>1. Swine. 2. Dog (some differences amongst scholars). 3. Blood. (Permissible to buy at times of necessity) 4. Selling dead meat. 5. Impure animals and those considered filthy in the Shariah and their manure. 6. Musical instruments. 7. Statues, idols and good luck charms. 8. The Quran. (Difference of opinions)</p>

## Forbidden: Selling during and after the Second Adhan of Jum'ah

[البيع عند آذان الجمعة]

<p><b>Proof</b></p>	<p>﴿ يَأَيُّهَا الَّذِينَ إِمَّا مُنْتَهِيَّا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ ذَلِكُمْ خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ ﴾ فَإِذَا قُضِيَتِ الصَّلَاةُ فَأَنْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ وَآذُكْرُوا اللَّهَ كَثِيرًا لَعَلَّكُمْ تُفْلِحُونَ ﴾</p> <p>O you who believe! If the call for prayer on the day of Jum'ah is given, then hurry to the remembrance of Allah. [AlJum'ah: 9-10]</p>
<p><b>Conditions for the prohibition</b></p>	<ol style="list-style-type: none"> <li>1. That the person (buyer or seller) is one upon whom Jum'ah is obligatory.</li> <li>2. That the sale is not absolutely necessary.</li> <li>3. That the person is aware of the prohibition.</li> <li>4. That the adhan of the khutbah (the second adhan) is or has been given.</li> </ol>
<p><b>Consequence</b></p>	<p>The trader is sinful, however the sale is valid according to the majority. As for the Hanbali and Dhahiri scholars, may Allah have mercy on them all, then they consider the contract to be invalid.</p> <p><b>Note:</b> What is the difference between the two opinions?</p>

<p><b>Note</b></p>	<p>Women can continue to buy and sell to each other after the Adhan of the Jum'ah because they are not from those upon whom the Jum'ah is obligatory.</p>
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☞ If a person who is obligated to pray the Jum'ah, deals with one who is allowed to trade during this time, then they are both sinful according to the majority of the scholars.

## Forbidden: Selling the unknown or uncertain [بَيْعُ الْغَرَّ]

<b>Definition</b>	The unknown or ambiguous (in its quantity or quality or any essential characteristic)
<b>Example</b>	Mystery bags sold in entertainment shows – when the contents of the bags are not known.
<b>Proof</b>	<p>نَهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْحَصَّةِ وَعَنْ بَيْعِ الْغَرَّ.</p> <p>The Prophet sallallahu alaihi wa sallam forbade against the sale by the stone and from the sale based on uncertainty. [Reported by Muslim]</p>

### Levels of uncertainty

1. Extreme: this is the type that is forbidden.
2. Minor: overlooked in business contracts. E.g.: An egg or a Mars bar.
3. Between the two: takes the ruling of permissibility or prohibition depending on which of the two is more in resemblance.

The reference for working out whether the level of uncertainty in a particular contract is beyond the limits or not – is the customs of the people



The strictest of all the madhabs in this matter is that of Abu Haneefah and Ash-Shafi may Allah have mercy on them all.

<b>Important note</b>	Unlimited or unrestricted benefit for a set fee is not from the forbidden transactions. Rather, stipulating an unlimited amount of product or not quantifying the amount of product in a deal is forbidden in some cases but permissible within certain arrangements.
<b>Example</b>	<p>Unlimited internet downloads for a set fee is not forbidden. Similarly, unlimited use of a car in the rental period is completely permissible because it is a service for a fee.</p> <p>However, it is not permissible to sell an undetermined amount of products for a set fee.</p>

**Modern contracts that contain a certain level of uncertainty**

- Food products with mystery gifts inside.  
(Difference of Opinions)
- Mystery flights.
- Selling a house or flat before it is built.  
(Difference of Opinions)



Do you think 'all you can eat' deals are similarly prohibited?

**Important rule**

The most important consideration is the main item upon which the deal is being made. If the main object of the deal does not have extreme uncertainty in it, then the contract is permissible even if certain parts of the contract may have high levels of uncertainty.  
Example: It is permissible to buy a burger meal that has an 'all you can drink' option.

**Gambling is prohibited due to high levels of uncertainty**

<b>Modern forms of gambling</b>	<ul style="list-style-type: none"> <li>• Buying a coke with the intention of winning the prize holiday. (Difference of opinion).</li> <li>• SMS competitions.</li> <li>• Scratches and Lotto tickets.</li> </ul>
<b>Note</b>	<p>It is permissible to buy a product that has a prize draw with it, as long as the intention was for the product itself. If in the process, a person ends up winning the draw, then the money would be permissible for him to take and it would be considered a gift from the shariah point of view.</p>

## Selling that which one does not possess is from the prime examples of uncertainty

<p><b>Proof</b></p>	<p>عَنْ حَكِيمِ بْنِ حِزَامَ قَالَ: سَأَلْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ: يَا أَيُّهُنَّ الْرَّجُلُ فَيَسْأَلُنِي مِنَ الْبَيْعِ مَا لَيْسَ عِنْدِي، أَبْتَاعُ لَهُ مِنْ السُّوقِ ثُمَّ أَبْيَعُهُ؟ قَالَ: لَا تَبْيَعْ مَا لَيْسَ عِنْدَكَ.</p> <p>From Hakeem bin Hizam: I asked Rasulullah sallallahu alaihi wa sallam: People come to me and ask me for things that I don't have. Do I sell it to him and then search for it in the market? He said: Don't sell that which you don't have. [Reported by Tirmidhi and authenticated by Ahmed Shakir]</p>
	<p>لَا يَحِلُّ سَلْفٌ وَبَيْعٌ، وَلَا شَرْطَانٌ فِي بَيْعٍ، وَلَا رِبْحٌ مَا لَمْ يَضْمَنْ، وَلَا بَيْعٌ مَا لَيْسَ عِنْدَكَ.</p> <p>It is not permissible to lend and sell (at the same time), nor two conditions in one sale, nor profiting without having the liability of loss, nor selling that which you don't possess. [Reported by Tirmidhi and certified hasan (acceptable) by AlAlbani.]</p>
<p><b>Note</b></p>	<p>The scholars have differed as to the meaning of this hadeeth upon 3 opinions:</p> <ol style="list-style-type: none"> <li>1. It means don't sell the specific item that you do not yet possess. On the other hand, if it is non-specific, then you can sell even if you don't possess it. This is the opinion of the Shafi madhab.</li> <li>2. It means don't sell the non-specific item, but you can sell the specific one that you possess. This is the opinion of the Hanafi and Hanbali madhabs.</li> <li>3. That you shouldn't sell the specific or the non-specific until you are the owner of it or it is within your ability to hand it over to the buyer upon a sale. This is the opinion of Sheikhl Islam Ibn Taymiyyah and is the stronger opinion in the matter inshaAllah.</li> </ol>

Based on this, do you think drop shipping is permissible?

## Forbidden: Riba [ربا]

<b>Riba in Judaism</b>	<p>[Exodus 22:25] "If you lend money to one of my people among you who is needy, do not be like a moneylender; charge him no interest."</p> <p>[Leviticus 25:36] Take not interest of any kind from him, but fear your God, so that your countryman may continue to live among you."</p>
<b>Riba in Christianity</b>	<p>[Matthew 21:12-13] "Then Jesus went into the temple of God and drove out all those who bought and sold in the temple, and overturned the tables of the money changers and the seats of those who sold doves. And He said to them, 'It is written, 'My house shall be called a house of prayer,' but you have made it a 'den of thieves.'"</p> <p>[Luke 6:35] "But love ye your enemies, and do good, and lend, hoping for nothing again; and your reward shall be great"</p>

Riba has been prohibited in all the Shariahs of Allah in the past and present. The gravity of the sin of dealing in riba is tremendous.

Pope Sixtus V condemned usury as "detestable to God and man, damned by the sacred canons and contrary to Christian charity".

<b>Riba in Islam according to the Qur'an and Sunnah</b>	<p>﴿ وَأَحَلَ اللَّهُ الْبَيْعَ وَحَرَمَ الرِّبَا﴾</p> <p>And Allah has permitted trade but forbidden riba.</p> <p>[AlBaqarah: 275]</p>
	<p>﴿ يَتَأَبَّلُهَا الَّذِينَ لَمْ يُؤْمِنُوا أَنَّقُوا اللَّهَ وَذَرُوا مَا يَقِنُ مِنَ الرِّبَا إِنْ كُنْتُمْ مُّؤْمِنِينَ ﴿٢٧٦﴾ فَإِنْ لَمْ تَفْعَلُوا فَأَذْنُوا بِحَرْبِ مِنَ اللَّهِ وَرَسُولِهِ وَإِنْ تُبْتُمْ فَلَا كُمْ رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ ﴿٢٧٧﴾</p> <p>﴿[AlBaqarah: 278-279] ﴾</p> <p>O you who believe! Leave that which remains upon you from riba, if indeed you are believers. If you do not, then take notice of war from Allah and His Messenger. And if you repent, then for you is your capital investment; you should not wrong, nor will you be wronged.</p>

	<p style="text-align: right;">لَعْنَ اللَّهِ أَكَلَ الرِّبَا وَمُوْكَلَهُ وَشَاهِدَيْهِ وَكَاتِبَهُ.</p> <p>Allah has cursed the one who consumes riba, the one who gives it, the two witnesses and the one who writes down the transaction. [Reported by Muslim]</p> <p><b>Note: How about the accountants who record entries of interest based transactions for their corporate clients?</b></p>
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<b>The wisdom behind its prohibition</b>	<p style="text-align: center;">﴿ كَيْ لَا يَكُونَ دُولَةٌ بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ ﴾</p> <p>So that it does not become a monopoly with the rich amongst you. [AlHashr: 7]</p> <ul style="list-style-type: none"> <li>● It corrupts society.</li> <li>● It leads to great misallocation of resources.</li> <li>● It results in negative economic growth.</li> <li>● It is oppressive.</li> <li>● It involves hoarding and monopolising.</li> </ul> <p>Also, the ones who are forced into Riba are usually the ones in need of capital and resources and the goals and purposes of the Shariah regarding such people is to give them ease in their difficulty. Not only that, but the Shariah has also made them from the legal recipients of Zakat. Thus, riba – which is levied on those who can't pay back in time, is completely against this great wisdom of the Shariah.</p>
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<b>Riba during the time of Jahiliyyah</b>	<p><b>Scenario 1:</b> Give me more time and I will increase.</p> <p><b>Scenario 2:</b> With the condition of increase from the outset.</p> <p><b>Scenario 3:</b> The interest to be paid monthly and the capital upon the end of term.</p>
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## Types of riba

### 1. Nature of the Contract:

- a. Riba of sales [رِبَا الْبَيْع]
- b. Riba in loans/debts [رِبَا الْقَرْض]

### 2. Reality

- a. Riba-n-Nasee'ah [رِبَا النَّسِيَّة]: The riba of delay
- b. Riba-al-Fadl [رِبَا الْفَضْل]: The riba of increase

## Riba in sales.

<b>Main hadeech</b>	الذهب بالذهب والفضة بالفضة والبر بالبر والشعير بالشعير والملح بالملح مثلاً بمثل يدأ بيده. Gold for gold, silver for silver, wheat for wheat, barley for barley, salt for salt, the same quantity for the same quantity, hand in hand. [Reported by Muslim]	
<b>Category</b>	Monetary items	Food items
<b>Main species</b>	Gold, Silver	Wheat, Barley, Salt, Dates
<b>The reason for riba</b>	Monetary purpose [مُطْلَقُ التَّمَمَّة]  - Being a Medium of exchange	Basic food items sold in weight or volume and can be stored.  [قوْت، مَكِيلٌ أَوْ مَوْزُونٌ، يُدَنَّحُ]

### **Another hadeeth**

جاءَ بِلَالٌ يَتَمَرُّ جَدِيدًا إِلَى رَسُولِ اللَّهِ مِنْ خَيْرٍ، وَقَالَ:  
 يُبَدِّلُ الصَّاعَ مِنْ هَذَا بِالصَّاعَيْنِ مِنْ ثَمَرٍ خَيْرٍ، فَقَالَ صَلَّى  
 اللَّهُ عَلَيْهِ وَسَلَّمَ: أُوْهَ عَيْنُ الرِّبَا، بِعْ الجَمْعَ بِالدَّرَّاهِمِ وَاشْتَرَ

.٤٩.

Bilal came with the new dates of Khaibar to Rasulullah sallallahu alaihi wa sallam and said: We purchase a sa'e of these dates (from Khaibar) for 2 sa'e of these dates (from Medinah). So he sallallahu alaihi wa sallam said: Ooh! This is exactly riba. Rather sell them off for Dirhams and then purchase (the dates from Khaibar) with it. [Agreed upon]

### **Important matters**

- Indulging in Riba-based transactions is tantamount to being at war with Allah (Subhanahu wa Tala).
- Riba includes all gains from loans and debts and anything above the principal of loans and debts and covers all forms of “interest” on commercial or personal loans.
- Riba in business transactions occurs when bartering the six items and related commodities [by way of analogy] without immediate possession from one or both parties or without equality in weight. Therefore, the scope of riba al-fadl is much wider in a barter economy than in modern-day market economies.
- One of the most important applications in modern times is currency trading in the International Forex markets.
- **Note: What is the reality of margin trading in the forex markets?**
- Stipulating a set benefit to the investor, such as: if you invest in my business, you will get 10% of your investment as profit each year – is a form of riba.



## In our time

- It is important to understand the history of currency.
- The currencies that we have today are in reality promisory notes that have taken value due to the customs of our time. They are a medium of exchange and therefore they are subjected to the rules of riba.
- Thus, bank loans that stipulate an increase on the capital are definitely riba.

### Some examples

- Online currency trading in the international currency markets.
- Exchanging gold jewellery for new ones and buying gold jewellery with credit cards.
- Cashing some types of cheques.

## Riba in borrowing

<b>Rule</b>	أيُّ قرْضٍ جَرَّ نَفْعًا فَهُوَ رِبَا. Any loan that brings benefit to the lender, in any form or amount, then it is a form of Riba.
<b>Explanation</b>	This benefit can be any meaningful form of benefit. It is for this reason that the scholars are divided as to the permissibility of the borrower giving a gift to the lender.

Former President Obasanjo of Nigeria said: "All that we had borrowed up to 1985 or 1986 was around **\$5 billion** and we have paid about **\$16 billion** yet we are still being told that we owe about **\$28 billion**. That \$28 billion came about because of the injustice in the foreign creditors' interest rates. If you ask me what is the worst thing in the world. I will say it is compound interest." (Jubilee 2000 news update, August 2000)

## Important point regarding diversion [حِيلَةٌ]

Many modern day transactions try to hide the reality of riba by apparently hiding it under other contracts. This is a forbidden diversion.

<b>Remember</b>	العبرةُ في العُقُودِ لِلْمَقَاصِدِ وَالْمَعْانِي لَا لِلْأَلْفَاظِ وَالْمَبَانِي. The consideration in contracts is for the real intention and meaning, not the wording or sentence construction.
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Pay particular attention to this rule as it has very important implications in various matters of Fiqh, especially in Business transactions

<b>Types of diversions</b>	<b>Permissible:</b> <ul style="list-style-type: none"> <li>When the goals and purposes of Shariah are not compromised.</li> <li>When the diversion itself is in accordance with the goals and purposes of Shariah.</li> </ul> <b>Impermissible:</b> <ul style="list-style-type: none"> <li>When the goals and purposes of Shariah are compromised.</li> <li>When the diversion in reality hides a forbidden contract.</li> <li>When there is no real intention in purchasing a product, rather it is only being done in order to bypass a forbidden transaction.</li> </ul>
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Example: Sale and buy back transactions with the intention of profiting from the difference of the two prices.  
[Bay' al-Eenah]

## Contracts that scholars have differed about

We will only discuss two contracts about which scholars have differences about:

1. 'Eenah sale [إِنَّهُ بَيْعُ الْعِينَةِ]
2. Tawarruq sale [بَيْعُ التَّوْرُقِ]
3. Deposit or down payment sale [بَيْعُ الْعَرْبُونِ]

### 'Eenah sale

<b>Definition</b>	A product is sold to the buyer with the money to be paid in the future and then repurchased from the buyer with a lesser amount of money paid immediately.
<b>Proof</b>	There are no authentic ahadeeth that prohibit this sale. There are however, a couple of da'eef ahadeeth pertaining to this prohibition.
<b>Example</b>	Abdullah buys a car from Sarah for 12,000 CND to be repaid in instalments of 1000 CND per month for the next 12 months. Thereafter, Sarah re-purchases the car back from Abdullah for 10,000 CND cash that she pays straight away.

<b>Explanation</b>	The vast majority of scholars, as against the Shafi madhab may Allah have mercy upon them all, are of the opinion that this contract is forbidden in Islam. The stronger opinion in this issue is the opinion of the majority.
<b>Note</b>	In the above example, if the car had depreciated or appreciated in value considerably or Sarah had paid exactly 12,000 CND or more to buy back the car or a third person purchased the car from Abdullah for 10,000 CND – then it would be permissible.

## Tawarruq sale

<b>Definition</b>	<p>A deferred purchase is made on a good, then sold to someone other than the first seller for a cash amount lower than which the second seller bought it for. This is called fiqhi Tawarruq.</p> <p><b>Note:</b> What is the difference between this fiqhi Tawarruq and the organized Tawarruq which became prevalent within some Muslim societies?</p>
<b>Explanation</b>	<ul style="list-style-type: none"> <li>• The majority of scholars hold that this kind of transaction is permissible.</li> <li>• Umar ibn Abdul Aziz and Muhammad ibn Hassan Al-Shaybani disliked such a transaction.</li> </ul>

## Deposit or Down payment sale

<b>Definition</b>	<p>A deposit is made at the time of contract with the condition that the rest will be paid upon taking possession of the product. In case the buyer doesn't wish to continue with the sale, then the seller gets the right to keep the deposit paid.</p>
<b>Explanation</b>	<p>The majority of the scholars, as against the Hanbali madhab may Allah have mercy upon them, are of the opinion that this type of transaction is not permissible.</p> <p>The stronger opinion is that such a contract is permissible inshaAllah as there are no authentic ahadeeth that prohibit this type of sale. Also, in an incident during the time of Umar, Nafi' bin Harith bought a prison camp on the basis that if Umar likes it, then the full money will be paid, otherwise the initial deposit would be taken by the seller.  [Reported in alMusnad of Imam Ahmad]</p>

## Manners of a Muslim businessman

<b>Reminder</b>	<p>رَحْمَةُ اللَّهِ عَبْدًا سَمْحًا إِذَا بَاعَ، سَمْحًا إِذَا اشْتَرَى، سَمْحًا إِذَا قَضَى، سَمْحًا إِذَا اقْتَضَى</p> <p>Allah has mercy on a slave who is forgiving when he sells, forgiving when he buys, forgiving when he judges, forgiving when he seeks verdicts.</p> <p>[Reported by AlBukhari]</p>
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### The manners of a Muslim businessman

- Correct intention.
- Good manners.
- Uprightness in his transactions.
- Knowledge of the halal and haram in business.
- Leaving riba and all that lead to it.
- Not consuming people's money by falsehood and not harming others.
- Following the laws and regulations regarding business.
- Supporting Muslims and Muslim businesses.

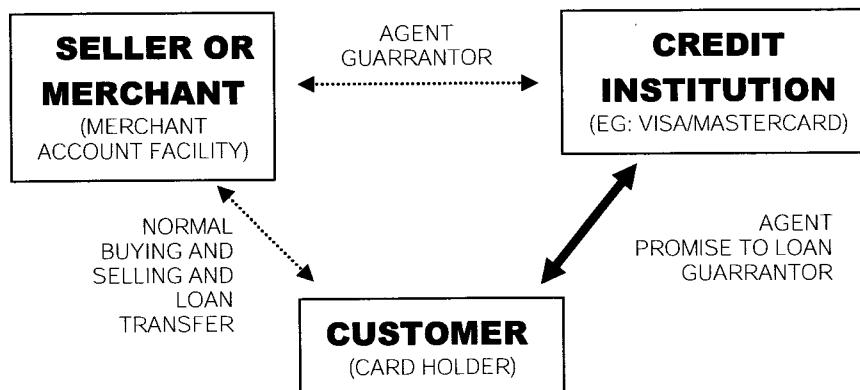
### The principles of halal investment

- The prohibition of dealing in that which is haram.
- Prohibition of dealing in riba.
- Prohibition of dealing in selling the unknown.
- Prohibition of cheating and covering up and fooling the customer.
- Prohibition of every sale that helps in the disobedience of Allah.

# MODERN TRANSACTIONS

## Credit and debit cards

<b>Types of cards</b>	<ol style="list-style-type: none"> <li>1. Credit cards: 2 types           <ul style="list-style-type: none"> <li>▪ Charge card</li> <li>▪ Revolving credit card</li> </ul> </li> <li>2. Debit cards: 2 types           <ul style="list-style-type: none"> <li>▪ Direct debit</li> <li>▪ Current account debit cards</li> </ul> </li> </ol>
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### Note from the above diagram:

The main problem with the above is the agreement to pay extra money upon any delay in the payment. This is a usurious condition.

<b>Important issues</b>	<ul style="list-style-type: none"> <li>• Buying gold and silver with credit cards: not permissible.</li> <li>• Taking out cash: Impermissible as riba is charged from the outset.</li> </ul>
<b>Card charges</b>	<ul style="list-style-type: none"> <li>• Once off charges for issuing debit cards is permissible inshaAllah.</li> <li>• Credit card annual fees are permissible as it is for a service.</li> </ul>

	<ul style="list-style-type: none"> <li>● Per transaction charge:           <ol style="list-style-type: none"> <li>a. If the transaction takes place using one's own money that is in one's account, then it is permissible. Example: Visa Debit cards.</li> <li>b. If the transaction is on credit, then it is impermissible (with some exceptions) and it is a form of riba.</li> </ol> </li> </ul>
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## Bank accounts and transactions

### Is the concept of Banks foreign to Islam?

Some Muslim economists claim that it is not foreign to Islam. Ibn Katheer rahimahullah reports in his Bidayah wan Nihaayah that Az-Zubair bin Awwam radillahu anhu died living behind a huge fortune of 59.9 Million dirham from them 2.2 Million was debt. Thus, he left behind a net inheritance of 57.7 Million dirham. How did he have so much money? AlBukhari reports in his Sahih that this was because people used to come to him and want to keep their money with him for protection, and he used to refuse and say: Rather I will take it as a loan. Then Az-Zubair used to invest that money for his own benefit.

<b>The reality of bank accounts</b>	<p>Bank accounts are regarded as loan facilities. The Shariah considers the account holders to have given loans to the bank.</p> <p>The interest paid by banks is forbidden by the complete consensus of the Ummah. [In the gathering of the World Fiqh Council on the 22-27 September 1985]</p> <p>Bank loans for purchasing houses are not permitted in our times as the degree of necessity has not yet reached unbearable levels.</p>
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 The difference between keeping a trust as against a loan is that the trustee cannot use the commodity for his own use, whereas in a loan, the person is permitted to use it for his own benefit. Additionally, a trust is not guaranteed by the trustee unless there is a proof of negligence, while loans are always guaranteed by the beneficiary.

## Banking transactions

<b>Permissible</b>	<p>Transactions in which the bank is providing a service for a fee, such as:</p> <ul style="list-style-type: none"> <li>• International money transfers.</li> <li>• Commissions from currency exchange</li> <li>• Safety and deposit boxes.</li> <li>• Current accounts – if no interest is being paid. As a result, ATM fees, online banking charges etc..would also be permissible. This is the ideal option; therefore dealing with conventional banks in the west or in the east is a matter of necessity.</li> </ul>
<b>Impermissible</b>	<p>Transactions where the bank charges money from:</p> <ul style="list-style-type: none"> <li>• Penalties for late payments.</li> <li>• Fees for credit transactions.</li> <li>• Letters of credit.</li> <li>• Credit lines</li> <li>• Overdraft facilities</li> <li>• Charging interest on loans.</li> </ul>

## Cheques and cash

### The rule regarding haram income

1. Buying gold and silver with cheques: It is not permissible to use normal cheques to buy gold and silver. On the other hand, buying gold with a certified cheque is permissible according to the consensus of the World Fiqh Council. This is because certified cheques take the rule of cash.
2. Buying currency with cheques: Permissible with a certified bank cheque, otherwise impermissible.

## Employment in financial institutions

<b>Main proof</b>	<p>﴿ وَتَعَاوَنُوا عَلَى الْبِرِّ وَالْقَوْمِيٍّ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدُونِ ﴾</p> <p>And help you one another upon righteousness and fear of Allah and do not help one another upon sin and transgression. [AlMaidah: 2]</p>
<b>Employment in financial institutions</b>	<p>It is not permissible to work for conventional financial institutions. If you work for another company that provides services to a conventional financial institution, then it is also not permissible if your main activity is being used to benefit them in their interest based activities.</p>

## Disposing of haram income

<b>The rule regarding haram income</b>	<p>المَالُ الْحَرَامُ لَا يُلْزَمُ رَدًّهُ وَلَا يَطِيبُ أَكْلُهُ .</p> <p>It is not obligatory to return haram wealth, nor is it suitable for utilization.</p>
<b>What should we do with it?</b>	<p>It should be given in charity for the benefit of the general community, not intending by it charity, rather intending to clear one's wealth from impurity.</p>

**Note:** Regarding stolen money; if the owner is known – then that item must be returned to him. If the owner is not known, then it takes the ruling of the above and is considered lost money.

## Commodity, Currency and Share Markets

<b>Main problems with Commodity and Currency markets</b>	<ol style="list-style-type: none"> <li>1. Selling commodities before taking possession of them.</li> <li>2. Selling of a debt for a debt.</li> <li>3. Presence of riba with both of its types.</li> </ol>
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<b>Reality of Shares</b>	<p>The majority of scholars of Islam are of the opinion that shares are permissible. They consider shares to be a share in the ownership of the company.</p>
<b>Main problems with Share markets</b>	<ol style="list-style-type: none"> <li>1. Numerous companies whose main business is in that which is prohibited.</li> <li>2. Buying and selling shares based on promises and a not contract is rampant.</li> <li>3. Buying and selling shares that one does not own.</li> <li>4. Special or golden shares as they are known – are not allowed in the Shariah.</li> <li>5. Option sales are not allowed.</li> <li>6. Sale of debt is rampant.</li> <li>7. Selling bonds (which is an expression of debt owed) – whether government or private is impermissible.</li> </ol> <p><b>Note:</b> What are the criteria of screening shariah compliant stocks within the Islamic Indexes?</p>

## **Instalment, upfront, lay-by, down payments and interest free terms**

Instalment and Upfront payments [بِيعُ السَّلْمَ] are permissible by near consensus.

**Note:** In a purchase plan on instalments, the customer must be in full control of the product.

<b>Upfront payment</b>	<p>They are allowed provided the following conditions are met:</p> <ol style="list-style-type: none"> <li>1. The full payment is handed over at the time of agreement.</li> <li>2. Complete and full description of the product must be clear at the time of agreement.</li> </ol>
<b>Note</b>	<ul style="list-style-type: none"> <li>• Upfront payment is a halal alternative to many investment scenarios.</li> </ul>

<b>Lay-bys</b>	<ul style="list-style-type: none"> <li>• Deposit lay-bys are permissible if the conditions of the contract are met.</li> </ul>
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## Mortgages and the modern dilemma

<b>Current trials for Islamic systems</b>	<ol style="list-style-type: none"> <li>1. Rent-to-own [إيجاره مُتَّهِيَّةٌ بِالْمُتَّمِيلِكِ]</li> <li>2. Musharakah [مُشَارَكَةٌ] or Mudarabah [مُضَارَبَةٌ]</li> </ol>
<b>Some of the problems with these systems</b>	<ul style="list-style-type: none"> <li>• Diversion [حِيلَةٌ] to disguise riba.</li> <li>• May not follow the principle of profit and loss sharing or principles of Musharakah.</li> <li>• The combination between two contracts might lead in some cases to a form of riba or oppression.</li> <li>• Uncertainty in the contract.</li> <li>• Embodies conditions that go against the part and parcel of a contract.</li> <li>• Embodies oppression upon the people buying the house.</li> <li>• Disguises increases in the capital which is riba under the name of administrative charges or late payment charges etc...</li> </ul>

## The problem of delaying payment

<b>The solution</b>	<ol style="list-style-type: none"> <li>1. The Islamic ruling is to give the debtor more time.</li> <li>2. Some means that scholars have discussed to make sure people pay on time:           <ul style="list-style-type: none"> <li>o Stipulating a guarantor or security payment/deposit.</li> <li>o Putting the condition that the rest of the payment is due upon delay of any single instalment.</li> <li>o Putting the condition that a late fee is to be paid to a third party, such as a charity, upon any delay in payment.</li> <li>o Putting the condition that the client pays for all the costs incurred by the seller or lender from third parties due to any lateness or default in payment by the buyer/borrower, such as bounced cheques, legal costs etc.</li> </ul> </li> <li>3. Any condition of increase in instalments, or late fees, etc. is a form of riba.</li> </ol>
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## Insurances

<b>The basic idea of insurance in Islam</b>	<p>Islam recognizes the need for insurance to help against unforeseen circumstances. However, it does not allow any profiting in it, as it leads to a number of major problems as discussed below. The concept of communal help is seen in:</p> <ul style="list-style-type: none"> <li>• Helping the one in debt from Zakat money.</li> <li>• The blood money upon the “A’aqilah” [عاقلة] tribe for the person who kills accidentally.</li> </ul>
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### Types of insurance

<b>Forbidden insurance</b>	<p>The purpose of which is trade and business.</p>
<b>Example</b>	<ul style="list-style-type: none"> <li>• House and Property insurance.</li> <li>• Life insurance.</li> <li>• Income protection insurance.</li> <li>• Funeral insurance etc.</li> </ul>
<b>Reason for its prohibition</b>	<ol style="list-style-type: none"> <li>1. Contains riba.</li> <li>2. It embodies eating people's wealth without right.</li> <li>3. It entails uncertainty (Gharar) in the contract.</li> <li>4. It entails oppression on both parties.</li> </ol>

<b>Permitted insurance</b>	<p>Cooperative or mutual insurance wherein all policy holders contribute to the pot with equal right to the money and any left-over in the pot is disposed of in a charitable manner or paid back to the participants as dividends. Examples of this include:</p> <ul style="list-style-type: none"> <li>• Accident insurance.</li> <li>• Social cooperative insurance (provides income support to disabled).</li> <li>• Medicare or national insurance.</li> </ul>
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- Note: Service type contracts are sometimes called insurance, however they are halal because it is about a service for a fee.
- Note: What are the differences between Takaful, Cooperative and Conventional modes of insurance?
- Is Takaful insurance fully compliant with the guidelines of Shariah?

## Business and Intellectual property, copyrights and trademarks

<b>Proofs</b>	<p style="text-align: center;">﴿ يَأَيُّهَا الَّذِينَ إِمْنَوْا أَوْفُوا بِالْعُقُودَ ﴾</p> <p>O you who believe! Honour your contracts. [AlMa'idah: 1]</p>
	<p style="text-align: center;">الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا أَحَلَ حَرَامًا أَوْ حَرَمَ حَلَالًا.</p> <p>The Muslims are upon their conditions, except a condition that makes a prohibited permissible or a permissible prohibited. [Reported by Abu Dawud]</p>
<b>According to the Shariah</b>	<ul style="list-style-type: none"> <li>• All types of business and intellectual property that is of value in today's market is recognized and acknowledged.</li> <li>• All manner of cheating and stealing or plagiarising trademarks or copyrights are not allowed and can be prosecuted.</li> </ul>

## **Repaying a debt during devaluation of currency, inflation, CPI related indexed payments**

<b>According to the Shariah</b>	<ul style="list-style-type: none"> <li>• All debts need to be repaid – the same amount and in the same currency.</li> <li>• Minor devaluation or revaluation is overlooked.</li> <li>• Major depreciation or appreciation during major calamities or turmoil is considered and in such cases, debts need to be paid at the new rate.</li> <li>• Government or private debts related to CPI (Consumer Price Index) or inflation rates are a form of riba according to the majority of the scholars. Example: Student loans.</li> <li>• Note: AMJA (Assembly of Muslim Jurists of America) has issued a fatwa regarding student loans: They are permissible in the west after exhausting all the other legal means and alternatives.</li> <li>• Debt repayments in different currencies are allowed based on the agreement of both parties and on the rate of exchange on the day of complete debt reimbursement.</li> <li>• CPI related salary or rent increases or decreases are permissible provided it is agreed upon at the beginning of every contract period.</li> </ul>
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**FINALLY**

This is not the end,  
 nor is it the beginning of the end.  
 It is perhaps, the end of the beginning.